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**IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION**

MOUNTAIN WEST HELICOPTERS,
L.L.C., a Utah limited liability company,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE, a United States agency,

Defendants.

COMPLAINT

Case No. _____

Judge _____

Plaintiffs Mountain West Helicopters, L.L.C., by and through counsel, hereby complains against the United States Department of Agriculture and alleges as follows:

DESCRIPTION OF THE PARTIES

1. Mountain West Helicopters, L.L.C. ("**MWH**") is a Utah limited liability company with its principal place of business in the District of Utah.

2. The United States Department of Agriculture (“**USDA**”) is a department of the executive branch of the United States Government and is an “agency” for purposes of 5 U.S.C. § 552(f). USDA includes component entities such as the Forest Service.

JURISDICTION AND VENUE

3. This is an action under the Freedom of Information Act (“**FOIA**”), 5 U.S.C. § 552.

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B).

GENERAL ALLEGATIONS

6. MWH provides a variety of helicopter services in the mountain states region.

7. MWH performs a substantial amount of work for USDA. In particular, MWH specializes in aerial mulching performed in connection with Burned Area Emergency Response (“**BAER**”) projects.

8. The USDA procurements are highly competitive and are typically issues as small business set-asides, precluding entities above a certain size standard from bidding on the projects.

9. In particular, USDA BAER mulching solicitations are usually classified as either a \$7 million or \$17.5 million size standard.

10. MWH qualifies as a small business under the \$17.5 million size standard, but not under the \$7 million size standard.

11. Without explanation, USDA arbitrarily issues its BAER mulching projects with alternating size standards.

12. On or about March 11, 2013, MWH filed a NAICS Code Appeal (the “*Appeal*”) with the Office of Hearings and Appeals (“*OHA*”), challenging the size standard designation for a solicitation issued by USDA Forest Service, Region II, (“*Region II*”).

13. Prior to, and in anticipation of a potential appeal, MWH issued a request to Region II (the “*Request*”) pursuant to FOIA.

14. The Request requested the following documents:

1. Records of all market research conducted by all contracting officers on the Procurements, including, without limit, all Requests for Information (“RFIs”); records of database searches in the Central Contractor Registry (“CCR”), System for Award Management (“SAM”), and SBA Dynamic Small Business Search (“DSBS”); all records of market research communications with the local SBA procurement center representative under FAR 10.001(c)(1); and all other records of market research conducted in the acquisition planning for the Procurements.

2. All internal documents regarding the review, analysis and application of market research relative to the determination for any small business set-aside limits and related size standards for the Procurements, including all documents directing and/or authorizing coordinating officers to issue such Procurements with or without small business set aside limits and related size standards.

15. Region II failed to respond to the Request as required by law.

FIRST CAUSE OF ACTION
(Order of Production—5 U.S.C. § 552(a)(4)(B))

16. MWH incorporates by this reference the allegations set forth above.

17. MWH sent the Request, by and through its counsel, on February 1, 2013.

18. Upon information and belief, Region II received the Request on February 1, 2013.

19. MWH has made multiple attempts to follow up on its Request, but has received no response.

20. USDA was required by law to respond to the Request within twenty (20) working days. 5 U.S.C. § 552(a)(6)(A); 7 C.F.R. § 1.7(a).

21. To date, USDA has not provided the records requested or notified MWH that its request was denied.

22. Neither has USDA notified MWH of the reasons for delay or the date by which it expects to dispatch a determination. 7. C.F.R. § 1.17.

23. Therefore, MWH has exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C).

24. Accordingly, MWH is entitled to an order and judgment directing USDA to produce the records requested by MWH.

25. Additionally, MWH is entitled to an award of attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, MWH pray for an order and judgment as follows:

1. An order and judgment directing USDA to produce the records requested by MWH in the Request.
2. An award of reasonable attorneys' fees and costs.
3. Any other further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 29th day of March, 2013.

BENNETT TUELLER JOHNSON & DEERE

/s/ Joshua L. Lee
Barry N. Johnson
Joshua L. Lee
Attorneys for Plaintiffs